

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-208674

DATE: Dec. 21, 1982

MATTER OF: Mullins Protective Services, Inc.

DIGEST:

A bid must be rejected, even though responsive on its face, where, despite bidder's denial, it is apparent that a mistake has been made.

Mullins Protective Services, Inc. (Mullins), protests the rejection of its bid which was for the operation and management of consolidated guard services at the Sewells Point Area Naval Complex, Norfolk, Virginia, under invitation for bids (IFB) No. N62470-82-B-4958, issued by the Naval Facilities Engineering Command.

The IFB contained specifications which incorporated Department of Labor Wage Determination No. 67-308 (Rev. 20), dated May 21, 1982, which was added to the IFB by amendment/modification No. 0002. The wage determination set forth two classes of guards to be paid differing minimum wages. "Guard I" duties involved "minimal training"; "Guard II" duties required "specialized training."

Six bids were received and opened on July 7, 1982. The three lowest bids were:

| | |
|--|----------------|
| Mullins Protective Guard Association | \$1,125,841.86 |
| Mullins Protective Services, Inc. | 1,172,461.68 |
| D. G. Boggs & Associates, Inc. | 1,523,182.66 |
| (Government estimate - \$1,781,075.60) | |

Given these facts, the contracting officer at the procuring facility contacted Mullins Protective Guard Association and requested submission of its bid worksheets since an error in bid was suspected.

At the meeting which ensued, representatives from Mullins Protective Guard Association and Mullins were advised that the work called for by the specifications

could be performed only by Guard II personnel at the Guard II wage rate of \$5.46 per hour. (The record does not indicate what, if any, connection between the two low bidders or why both attended the meeting when only one was contacted.) The first and second low bidders rejected this interpretation of the specifications. Subsequently, the Navy rejected both bids under authority of Defense Acquisition Regulation (DAR) § 2-406.3(e)(2) (DAC # 76-24, August 28, 1980), which provides: "When * * * there are other indications of error so clear as reasonably to justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders [the bid may be rejected.]"

Both companies then protested the rejection of their bids. Mullins Protective Guard Association, the apparent low bidder, later withdrew its protest. Mullins argues that its bid, which incorporated the Guard I wage rate of \$3.82 per hour, was without error and that it incorporates the correct wage rate determination under a proper reading of the work requirements.

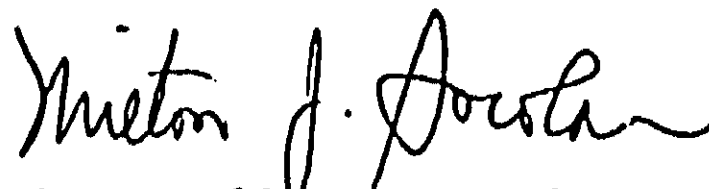
The wage determination that was incorporated into the IFB contained the hourly rates for both Guard I and Guard II without specifically indicating which rate was required for this contract. An examination of the specifications, however, indicates that Guard II personnel were required. Paragraph "M" of the technical specifications requires guards to have satisfactorily completed a 200-hour training program at the contractor's expense before being assigned to the contract work. The training is to include training and qualification as a marksman with the caliber .38 Special revolver using a firearms qualification standard which the specifications describe in detail; moreover, the specifications require the guard employees to qualify annually thereafter. Guard I duties do not require the demonstration of proficiency in the use of firearms or special weapons, while Guard II duties require continuing proficiency with firearms. Moreover, the specifications state that "physical fitness and mental/emotional stability shall be evidenced by examination by a licensed physician, conducted prior to the employee's assignment to duty and annually thereafter." The position description contained in the Guard I wage classification specifically states that the

guard is not required to demonstrate physical fitness while Guard II personnel are required to demonstrate continuing physical fitness. The contract specifications describe the conditions under which guards may use deadly force including a definition of that term. That the specifications contemplate the possible use of deadly force makes it clear that persons in the Guard I classification were not sought by the IFB. Thus, bidders should have realized that the Guard I wage rate was surplusage as far as this IFB was concerned.

Mullins cites Nonpublic Educational Services, Inc., B-204008, July 30, 1981, 81-2 CPD 69, as precedent in support of its protest. In that case, we held that there is no legal principle that precludes an award to a low bidder simply because it chooses to bid at a loss. That case is distinguishable on its facts from the instant case. In the cited case, there was no suggestion that the bidder intended to furnish employees who would deviate from the contract requirements unlike Mullins' position in this procurement. The bidder in that case simply submitted a below cost bid which we held could be accepted. This case, however, involves a bidder who is denying that a mistake has been made in his bid when it nonetheless is apparent that an error indeed has been made.

Mullins' protest clearly shows that its bid was based on a mistaken interpretation of the guards to be furnished. Also, its bid price was considerably less than both the only other bid in line for award and the Government estimate for the work. In these circumstances, and even assuming that Mullins' bid, on its face, was responsive to the work requirements, it is our view that the bid is to be rejected even though Mullins has not claimed a bid mistake. See Kencom, Inc., B-200871, October 5, 1981, 81-2 CPD 275.

Accordingly, the protest is denied.


for Comptroller General
of the United States